

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION**

IN RE:

**RUDOLPH A. STOUT
PRISCILLA B. STOUT**

Debtors.

**Case No. 05-06121-8-JRL
Chapter 13**

ORDER

This matter is before the court on the objection to confirmation of debtors' Chapter 13 plan, filed by Branch Banking and Trust Company ("BB&T"). On October 4, 2005, the court conducted a hearing on this matter in New Bern, North Carolina.

BB&T is the holder of a promissory note, executed on December 27, 2003, which grants BB&T a security interest in debtors' 2001 Volvo V70. On August 9, 2005, debtors filed a Chapter 13 bankruptcy petition. BB&T filed a proof of claim in the case for the secured amount of \$20,572.73. The debtors' Chapter 13 plan proposes treating BB&T's claim as secured in the amount of \$12,300.00, due to the value of the automobile. BB&T objects to debtors' valuation of the 2001 Volvo, asserting that the value is \$17,400.00, as determined by the National Automobile Dealer's Association's ("NADA") Official Used Car Guide.

Under 11 U.S.C. § 506(a), a creditor has a secured claim to the extent of the value of the collateral and an unsecured claim for the balance. The value of the collateral is determined "on a case-by-case basis, taking into account the facts of each case and the competing interests in the case." See H.R REP. NO. 595, at 356 (1977). In automobile valuation, NADA's Official Used Car Guide is used

by many courts, as it is “a reliable and authoritative source for average retail and wholesale values for vehicles at valuation hearings.” In re Henderson, 235 B.R. 425, 429 n.1 (Bankr. C.D. Ill. 1999); see also In re Ballard, 258 B.R. 707 (Bankr. W.D. Tenn. 2001); In re Ulino, 190 B.R. 681, 682 (Bankr. M.D. Fla. 1995). NADA uses auto valuation data compiled from auto manufacturers, new and used car dealers, major newspapers, and over 140 auctions nationwide to publish its ten regional guides.

Based on the foregoing and the Chapter 13 trustees’ established use of the NADA Guide in this district, the court will presumptively use the NADA retail value in determining the value of an automobile that is to be retained in a Chapter 13 case.. This presumption can be overcome by admissible evidence of the particular characteristics of an automobile, or by laying an evidentiary foundation that a competing guide’s valuation should be applied. The debtors in this case did not produce such evidence.

Accordingly, the court finds that the value of debtors’ 2001 Volvo is \$17,400.00. Pursuant to § 506, BB&T’s claim must be treated as secured in the amount of \$17,400.00, and unsecured as to the balance of the claim. The objection to confirmation of debtors’ Chapter 13 plan is allowed. Debtors are allowed ten days in which to indicate to the trustee that they acquiesce in this ruling and wish to confirm a plan incorporating this valuation. If they fail to do so, the case will be dismissed.

So Ordered.

Dated: October 6, 2005


J. Rich Leonard
United States Bankruptcy Judge